

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs June 23, 2009

STATE OF TENNESSEE v. WILLIAM TOWNLEY SIMONTON

Appeal from the Criminal Court for Sullivan County
No. S50,148 R. Jerry Beck, Judge

No. E2007-01238-CCA-R3-CD - Filed December 29, 2009

Following the denial of his motion to suppress, the Defendant, William Townley Simonton, pled guilty to possession of one-half gram or more of cocaine with the intent to sell and sale of one-half gram or more of cocaine within 1000 feet of a school zone, both Class B felonies, and received consecutive eight-year sentences. The Defendant's plea agreement preserved a certified question of law regarding the legality of the searches that led to his arrest. We hold that the trial court properly denied the motion to suppress. We affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and NORMA MCGEE OGLE, JJ., joined.

Dumaka Shabazz, Nashville, Tennessee, for the appellant, William Townley Simonton.

Robert E. Cooper, Jr., Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; Joseph E. Perrin, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

At the suppression hearing, Detective Sean Chambers of the Kingsport Police Department Vice Unit testified as follows. On July 13, 2004, he had 738 East Sevier Street, the home of the Defendant's mother, Ms. Millie Simonton, under surveillance for drug activity. He had been acquainted with "Ms. Millie" for over twelve years at that time, knew she was bedridden, and had observed crack cocaine being regularly sold from her home. On that evening, he saw a vehicle pull up and a passenger get out, enter the residence, and return to the vehicle within minutes. He and his fellow officers approached the passenger, later identified as Merle Parsons, discovered cocaine in his possession, and learned from him that he had purchased the drug from a black male in the residence.

Detective Chambers testified that he approached the house and knocked on the front door, which was opened by a woman who identified herself as Rowena Simonton. He later learned that she was the ex-wife of James Simonton, one of the Defendant's brothers, and that she was helping to care for Ms. Millie Simonton. He identified himself, explained why he was there, and told her that he would like to check on Ms. Millie. After yelling toward the back of the house that the police were there, she admitted him into the residence, which was full of a number of people, and escorted him to a rear bedroom where Ms. Millie Simonton was in bed. He asked Ms. Millie Simonton if she knew about the people in the residence, and she answered that she did not and that they were not supposed to be there. He then asked her if she wanted him to have them leave, and she confirmed that she did. In addition, one of her sons, Don Simonton, whom he contacted by telephone, also asked him to remove the people from the house.

Detective Chambers further testified that after asking the people in the house to leave, he returned to Ms. Millie Simonton's bedroom to find the Defendant seated in a chair to the right of the doorway. He was familiar with the Defendant, had reason to believe he was involved in cocaine, and asked for his consent to search him. The Defendant consented to the search, but Detective Chambers found nothing on him at that time. He did not tell the Defendant that he was under arrest or in custody, and the Defendant left the bedroom and went out to the front porch. Detective Chambers later went to the front porch and talked to the Defendant again. During that conversation, the Defendant aroused his suspicions by being "extremely nice," repeatedly pleading that he not be taken to jail, and "fidgeting or pulling at the front of his shorts." He, therefore, asked the Defendant if he could search him again, and the Defendant once again consented.

Detective Chambers testified that during the second search, in which he paid greater attention to the Defendant's genital and buttocks areas, he felt a hard substance between the Defendant's "butt cheeks." At that point, he had the Defendant step back into the doorway of the residence and summoned his fellow officer, Sergeant Phipps, to the area. He then shook the leg of the Defendant's shorts and a piece of toilet paper wrapped around a plastic bag containing tan-colored rocks, which appeared to be crack cocaine, fell out of the shorts onto the floor.

On cross-examination, Detective Chambers testified that he neither searched the house nor asked for permission to search it, that the Defendant consented to the searches of his person without protesting or asking why he was being searched, that he requested and received consent to search the persons of each of the nine individuals who were present in the residence that evening, and that the Defendant was not handcuffed until after the items fell out of his pants. Upon questioning by the trial court, he testified that he never ordered the Defendant to do anything and did not ask either him or Rowena Simonton to leave the residence.

The fifty-two-year-old Defendant testified that Rowena Simonton did not live at the residence, was not a regular visitor to the home, and had been there for approximately an hour at the time Detective Chambers knocked on the door. He denied that he gave Detective Chambers his consent to search him, testifying that he asked Detective Chambers to leave his home when Detective Chambers asked to search him in the bedroom but that the detective searched him anyway. He stated that the detective never asked his permission to conduct the second search but instead

came from the outside into the front room, grabbed his hand, turned him around, handcuffed him, and searched him.

Lieutenant Dale Phipps, called as a rebuttal witness by the State, testified that he was the supervising officer of the Kingsport Police Department's Vice Unit on July 13, 2004, and was in the back of the residence when Detective Chambers called for his assistance. He said that when he responded, he found Detective Chambers and the Defendant just inside the front door. He stated that Detective Chambers told him that he had searched the Defendant again and felt a hard object in the Defendant's pants. He said that Detective Chambers then shook the Defendant's clothing and the bag of cocaine fell out. Lieutenant Phipps testified that they placed the Defendant in handcuffs at that point because it was immediately obvious to him that the object that fell from Defendant's shorts was cocaine. On cross-examination, he testified that Detective Chambers might have been holding the Defendant's arm at the time he arrived in the living room area. He was positive, however, that the Defendant was not handcuffed until after the search was completed.

At the conclusion of the hearing, the trial court denied the motion to suppress. Among other things, the trial court accredited the officers' testimony over that of the Defendant, finding that Rowena Simonton invited the officers into the home and that the Defendant consented to the searches of his person. The Defendant then pled guilty and properly preserved a dispositive question of law. See Tenn. R. Crim. P. 37(b)(2); State v. Preston, 759 S.W.2d 647 (Tenn. 1998). The question, as stated in the trial court's order accepting the conditional guilty pleas, is:

Whether the trial [c]ourt erred when the trial [c]ourt denied relief after the Defendant moved to suppress all fruits of a search and seizure conducted on July 13, 2004 at the residence located at 738 East Sevier Street, Kingsport, Tennessee on the grounds that: (1) The search and seizure was conducted in the absence of a warrant and or probable cause (2) That the search and seizure was conducted without valid, effective consent both of which are a violation of [the] Fourth Amendment to the Constitution of the United States and Section 7 of Article 1 of the Constitution of Tennessee, as well as to statutes and laws of Tennessee.

A trial court's factual findings on a motion to suppress are conclusive on appeal unless the evidence preponderates against them. State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996); State v. Jones, 802 S.W.2d 221, 223 (Tenn. Crim. App. 1990). Questions about the "credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." Odom, 928 S.W.2d at 23. The application of the law to the facts as determined by the trial court is a question of law which we review de novo on appeal. State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997).

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures, and "article 1, section 7 [of the Tennessee Constitution] is identical in intent and purpose with the Fourth Amendment." State v. Downey, 945 S.W.2d 102, 106 (Tenn. 1997) (citation omitted). It was undisputed that the searches conducted in this case were warrantless. The

analysis of any warrantless search must begin with the proposition that such searches are per se unreasonable under the Fourth Amendment to the United States Constitution and article 1, section 7 of the Tennessee Constitution. This principle against warrantless searches is subject to only a few specifically established and well-defined exceptions. See Katz v. United States, 389 U.S. 347, 357 (1967); State v. Tyler, 598 S.W.2d 798, 801 (Tenn. Crim. App. 1980). Before the fruits of a warrantless search are admissible as evidence, the State must establish by a preponderance of the evidence that the search falls into one of these narrowly-drawn exceptions to the warrant requirement. See State v. Shaw, 603 S.W.2d 741, 742 (Tenn. Crim. App. 1980). One such exception is when there is a consent that is “unequivocal, specific, intelligently given, and uncontaminated by duress or coercion.” State v. Brown, 836 S.W.2d 530, 547 (Tenn. 1992).

The Defendant contends that he “effectively denied” his consent to the search by responding to the detective’s request to search him by asking the detective to leave his home. He also contends that any consent he may have given was rendered involuntary due to the officers’ failure to leave his home upon his request, which “effectively placed [him] in [c]ustody.” The trial court, however, accredited the testimony of the officers over that of the Defendant on the issue of consent, as was its prerogative as the finder of fact. The trial court’s ruling states in pertinent part:

Now, the next issue, that of consent comes to weighing the credibility of witnesses. The Court noted that both the police officers, both on direct, Mr. Chambers, and on rebuttal, Mr. Phipps matched. They appeared to be straight forward. I realize that [the Defendant] testified. He was pretty direct. I don’t know him. I am not going to say, “Well, he squirmed around,” or something like that. He didn’t. He just told his side of it. I am not going to sit here and embellish it. He said one thing and Chambers said the other. Neither one of them squirmed around or acted nervous or looked up to the ceiling or anything like that, but I have to consider the weight of the evidence and the believability of the evidence, and it is this Court’s belief that upon the testimony of the two officers, that they are more credible and to the over-all testimony; therefore, I credit the testimony of the officers and I find that [the Defendant] is untruthful in regards to that issue, so the officers testified it was a consent search. I find that it was a consent search; that the officers were legally there where they were.

The evidence does not preponderate against the trial court’s findings. Detective Chambers unequivocally testified that he asked for and received the Defendant’s consent to both searches. He further testified that the Defendant simply consented without protesting or inquiring why he wanted to conduct the search and that he was not taken into custody until after the contraband was discovered. Moreover, as the trial court noted, Lieutenant Phipps corroborated that the Defendant was not handcuffed until after the second search had resulted in the discovery of the crack cocaine.

We conclude that the trial court properly denied the motion to suppress. In consideration of the foregoing and the record as a whole, the judgments of the trial court are affirmed.

JOSEPH M. TIPTON, PRESIDING JUDGE